IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9711 of 1998

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEOPRAYAG TIWARI - Petitioner(s)
Versus
CHIEF SECURITY COMMISSIONER RAILWAY PROTECTION FORCE & 2 - Respondent(s)

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Appearance :
MS PJ DAVAWALA for Petitioner(s) : 1,
MRS SHILPA R SHAH for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 07/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. The petitioner joined the service as Police Constable in the Railway Protection Force. Thereafter, he was promoted as Naik. Since 1991 he was posted at Miyagam Karjan on the post of Naik. Serious allegations were made against the petitioner that at Miyagam Karjan he was indulging in money lending activities. He was charging 20% interest and taking signatures on blank papers, and thereby, misusing his possession and authority. On these serious allegations, at the first instance, the petitioner was transferred from Miyagam Karjan to Sabarmati by an order dated 1-6-1995. Instead of carrying out the transfer order, he preferred to challenge the said order before the Court of Civil Judge (S.D.), Vadodara, by way of Special Civil Suit no.368/1995 on the ground that he had not completed five years at Miyagam Karjan, still he was transferred. His injunction application Exh.5 filed in the suit was dismissed, but anyhow he got an order from the District Court in appeal as stated by the petitioner in the petition. Since his order of transfer dated 3-6-1995, the petitioner was remaining

absent. Therefore, an inquiry was held against him for two chargres (i) remaining absent from duty with effect from 3-6-1995 and (ii) indulging in money lending activity with the railway staff. A chargesheet dated 30-12-1995 was issued to the petitioner, but the petitioner successfully evaded the service of it. It has come out in the reply affidavit filed on behalf of the respondents that at the first instance, they tried to serve the petitioner personally with the chargesheet, but he refused to accept the same. The petitioner was allotted a residential quarter, for which he did not opt and he was illegally staying with one Kalidas V. , Pointsman, in his quarter at Miyagam Karjan. Therefore, they tried to serve the petitioner with the chargesheet at the address of Shri Kalidas, but he was not found there. Therefore, statement of Shri Kalidas was recorded to show that they tried to serve the charge-sheet to the petitioner. Thereafter, they also tried to serve the petitioner at the time of proceedings in the District Court at Vadodara, but there again he refused to accept it. Ultimately, they tried to serve the petitioner at his native address,

but it was returned unserved with the postal endorsement.

2. Under the aforesaid circumstances, the respondents-authorities had no option but to proceed against the petitioner ex parte. After recording the oral evidence the inquiry officer found both the charges levelled against the petitioner proved. Considering the report of the inquiry officer, the disciplinary authority by an order dated 12-7-1996 compulsorily retired the petitioner from service. The said order was challenged in appeal before the appellate authority. However, the appellate authority also dismissed his appeal by an order dated 30th September, 1998. Hence, this petition.

3. Ms. Davawala for the petitioner raised the following contentions:

(i)That the entire inquiry was vitiated as petitioner was not given any opportunity to defend himself in the inquiry. Thus,in short, an ex parte inquiry was made to

compulsorily retire the petitioner from service which is in violation of principles of natural justice. Therefore, the impugned orders passed by the disciplinary authority and the appellate authority at Annexures 'A' and 'B' respectively are liable to be quashed and set aside.

(ii)Though the impugned order of compulsory retirement was passed on 12th July, 1996, it was served upon the petitioner only on 16-8-1998 after a period of more than two years. Thus, on the ground of delayed service of the order of compulosry retireement, the impugned order is required to be quashed and set aside.

(iii)In any case the order of compulsory retirement from service was very harsh. The punishment is highly disproportionate to the guilt which is found to be proved.

4. It is no doubt true that there was an ex parte inquiry against the petitioner, but in the first instance from the reply affidavit filed by the

respondents it is more than clear that in spite of their best efforts they could not actually serve the chargesheet to the petitioner. Once the petitioner refused to accept the notice, then it is to be treated as accepted. Before proceeding against the petitioner by way of an ex parte inquiry, all possible efforts were made by the respondents-authorities to serve the petitioner with the chargesheet but because of the attitude of the petitioner, the chargesheet could not be actually served. The fact remains that the petitioner was in know of the inquiry proceedings against him. If he has chosen not to participate in the inquiry and defend himself, then subsequently, he cannot find fault with the inquiry. Hence, on peculiar facts of this case, it cannot be said that the inquiry was held and the order of punishment was passed against the petitioner in violation of the principles of natural justice. In such type of cases, principles of natural justice would not apply.

5. The second submission is regarding late service of order of punishment. It is true that the order of

punishment of compulsory retirement was served after two years, but it was because of the attitude of the petitioner who was evading service of the order of penalty. On this ground, in absence of any prejudice, the petitioner cannot make any grievance. Hence, the second submission of Ms. Davawala is also rejected.

6. This brings us to the last contention of Ms. Davawala regarding disproportionate punishment. It is no doubt true that the petitioner was in service since 1966 as Police Constable and later on in 1991 he was promoted to the post of Naik and when the order of compulsory retirement was passed against him he had put on 28 years of service, but looking to the seriousness of both the charges which are found to be proved against him in the departmental inquiry, it cannot be said that the penalty of compulsory retirement was highly disproportionate. In fact, in our considered opinion, the disciplinary authority took little lenient view of imposing only penalty of compulsory retirement as, according to us, the petitioner was misusing his position and status as Naik in the RPF by indulging in money lending

activity. Charing 20% interest from the railway staff on the money lent by him and taking signatures of the concerned persons on blank paper is a grave misconduct. In fact, such person should have been dismissed from service. The second charge is also of a serious nature of remaining absent from duty for a long, long time. He was in a disciplined force. He was Naik. Transfer is a regular feature. One cannot claim to be there for a particular period. In the instant case, the petitioner was transferred on the serious complaint received by the authority that he was indulging in money lending activity at Miyagam Karjan, and therefore, he was transferred from Miyagam Karjan to Sabarmati. It seems that his business of money lending was flourishing because he was at Miyagam Karjan for about five years, and therefore, he was reluctant to leave Miyagam Karjan. He, therefore, continuously remained absentfrom duty. Such type of persons in Railway Protection Force cannot be continued. In our considered opinion, the view taken by the disciplinary authority was a lenient one. At the cost of repetition, we may state that when such serious charges are found to be proved

against the petitioner, the order of dismissal would only be the appropriate punishment. In the instant case, it cannot be said that the penalty of compulsory retirement was either harsh or disproportionate.

7. In view of the above discussion, this petition fails and is hereby dismissed. Rule is discharged with no order as to costs.

(B.J.Shethna,J.)

(M.D.Shah,J.)

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